

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

PAUL A. GRANT,

Plaintiff,

vs.

MERIT SYSTEMS PROTECTION BOARD,

Defendant.

CIV. NO. 21-00239 LEK-WRP

**ORDER DISMISSING CASE WITH PREJUDICE**

On March 18, 2021, the United States Court of Appeals for the Federal Circuit docketed pro se Petitioner Paul A. Grant's ("Grant") petition for review of an Initial Decision by Respondent Merit Systems Protection Board ("MSPB" and "Petition"). [Dkt. no. 1-3 (Notice of Docketing and Request for Judicial Review).] On May 19, 2021, the Federal Circuit issued an order transferring the case to this district court. [Dkt. no. 1 at PageID #: 1-3 (transmittal letter and order).] On July 14, 2021, Respondent Thomas W. Harker, Acting Secretary of the Navy ("the Navy"), which asserts it - not the MSPB - is the proper responding agency, filed its Motion to Dismiss Petition ("Motion"). [Dkt. no. 5.] On October 19, 2021, this Court issued an entering order granting the Motion and dismissing the Petition without prejudice ("10/19/21 EO"). [Dkt. no. 9.] The 10/19/21 EO directed Grant to file an amended petition by

November 18, 2021 and cautioned him that, if he failed to do so, the Petition could be dismissed with prejudice. [Id. at PageID #: 189.]

As of the date of this Order, Grant has neither filed an amended petition nor requested an extension of the filing deadline issued by this Court. Because Grant has not identified any circumstance which constitutes good cause warranting an extension of the November 18, 2021 deadline, this Court has the discretion to dismiss the Petition with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)).<sup>1</sup> After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),<sup>2</sup> this Court finds that the public interest in the

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<sup>1</sup> Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

<sup>2</sup> The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . :  
 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring  
 (. . . continued)

expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of Grant's claims on the merits. Moreover, the Navy will not be prejudiced by the dismissal with prejudice. Further, there are no less drastic alternatives available at this time.

Grant's Petition is HEREBY DISMISSED WITH PREJUDICE. This Court DIRECTS the Clerk's Office to enter final judgment and close the case on **January 7, 2022**, unless Grant files a timely motion for reconsideration of this Order as provided in the Local Rules of Practice for the United States District Court for the District of Hawaii.

IT IS SO ORDERED.

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the disposition of cases on their merits; and  
(5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

DATED AT HONOLULU, HAWAII, December 21, 2021.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

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